



State of Louisiana
Department of Health and Hospitals
Bureau of Legal Services

June 6, 2022

Via Email (Khan.Zahra@epa.gov)

Lilian S. Dorka, Director
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Office of General Counsel
U.S. Environmental Protection Agency
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P.O. Box 94094
Washington, D.C. 20460

Re: EPA Complaint No. 02R-22-R6

Dear Ms. Dorka:

I am writing on behalf of the Louisiana Department of Health ("LDH") in response to your letter dated April 6, 2022, concerning the above-referenced matter. I would like to thank you again for extending LDH's allowed response time until June 6, 2022.

It is LDH's position that all of the complained of actions/inactions taken or omitted by LDH were based upon the reasonable conclusions and determinations of various LDH personnel, based upon the best evidence and science available thereto, and were *not* motivated, in whole or part, by any bias, whether conscious or unconscious, against any racial, ethnic, socioeconomic, minority, or other protected group. LDH further avers that any differences in treatment regarding situations that bear a surface resemblance were the result of underlying situational differences or non-biased differences in conclusions made by varying personnel, and that no disparate impact on similarly situated persons or groups resulted therefrom.

LDH's responses to the two enumerated paragraphs appearing on pages 2-3 of the above-referenced April 6, 2022 letter are set forth below. Note that some of the responses may additionally address other matters mentioned in the underlying January 20, 2022, Administrative Complaint lodged by the Sierra Club and Concerned Citizens of St. John ("CCSJ"), hereinafter sometimes referred to as the "Complaint".

- 1. Whether LDH subjects Black residents of St. John the Baptist Parish, including students at the Fifth Ward Elementary School, to discrimination on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation**

at 40 C.F.R. Part 7, § § 7.30 and 7.35, including by allegedly failing in its duty to provide Parish residents with necessary information about health threats, and to make necessary recommendations to all relevant government agencies and affected communities regarding measures to reduce and prevent exposure to hazardous air pollutant emissions from the Denka facility and other nearby sources of pollution.

LDH denies that it has failed in any duty it may have to provide St. John the Baptist Parish residents with necessary information about health threats, or to make necessary recommendations to all relevant government agencies and affected communities regarding measures to reduce and prevent exposure to hazardous air pollutant emissions from the Denka facility and other nearby sources of pollution.¹ Since the EPA released its 2011 National Air Toxics Assessment (NATA) on December 17, 2015, wherein chloroprene was noted as a regional cancer risk driver in the St. John the Baptist Parish area, LDH has worked and coordinated with LDEQ and EPA to assess risk levels in that area related to chloroprene and

¹ The Complaint correctly notes that under La. R.S. 36:258, LDH is tasked with "... perform[ing] those functions of the state provided by law relating to environmental quality and pollution control which are related to the public health and which are specifically assigned to the department." However, matters related to air pollution and air contaminants resulting from industrial emissions are not specifically assigned to LDH. Such matters are specifically statutorily assigned to LDEQ. See generally, La. R.S. 36:324 <http://www.legis.la.gov/Legis/Law.aspx?d=92712> (emphasis added):

§234. Powers and duties of secretary of environmental quality

A. In addition to the functions, powers, and duties otherwise vested in the secretary by law, he shall:

...

(6) Develop programs of environmental and resource preservation research and **study and develop programs of research into technology utilization, pollution prevention and control, and health effects of pollution.**

...

(8) **Develop programs of public information and education regarding environmental problems, developments, hazards, or programs.**

(9) **Establish programs to monitor and analyze emissions into the air, water, or land and to provide current and accurate information to the public regarding the pollutants or contaminants which are present in the environment.**

...

The Complaint further states that:

The duties of SEET include: (1) "[i]dentifying chemicals in the environment which are likely to cause adverse health effects," (2) "[e]valuating the extent of human exposure to these chemicals and the resultant adverse health effects," (3) "[m]aking recommendations for the prevention and reduction of exposure to hazardous chemicals," and
(4) "[p]romoting a better public understanding of the health effects of chemicals in the environment."

As authority for that statement, the Complaint cites no statute, regulation or constitutional provision, but rather cites language on LDH\SEET's website that details the *functions* of SEET. LDH avers that an agency's own website cannot impose duties thereon, and that discretionary functions must be distinguished from mandatory duties.

other chemicals. LDH has also participated in meetings, briefings, studies, events, and correspondence intended to inform relevant governmental entities and affected members of the public concerning the risks related to chloroprene and other chemicals in St. John the Baptist Parish. A non-exclusive listing of such activities includes²:

- July 7, 2016 – LDEQ hosts a community meeting to discuss chloroprene monitoring efforts in LaPlace. Officials from LDEQ, EPA, Denka, and local parish government are available to answer questions and provide updates on monitoring results. Dr. Susanne Straif-Bourgeois and Dr. Vivien Chen presented for LTR. Attendees from LDH included Dr. Jimmy Guidry, Bob Johannsen, Dr. Raoult Ratard, Dr. Parham Jaber, Dianne Dugas and Shannon Soileau. After agency presentations, community members expressed concern for their health and property values. The following health concerns were raised by a community member: cancer, dizziness, nausea and light headedness. The Green Army representative, General Honore, inquired about funding for a health survey and “toxicology clinic” and called into question the data presented by the LTR.
- December 2, 2016 – LDEQ/LDH MEETING: LDEQ (Chuck Carr Brown, June Sutherlin, Denise Bennett, Lourdes Iturralde, Herman Robinson, Greg Langley, Bijan Sharafkhani) LDH (Parham Jaber, Jimmy Guidry, Dianne Dugas, LuAnn White [Tulane SPHTM], Rosalind Green) {meeting notes not available in digital record}
- December 8, 2016 – LDH/SEET attended the St. John Parish School Board meeting in which there was a discussion regarding the Denka site and chloroprene issues. Dr. Brown (LDEQ) explained that the EPA has yet to establish a chloroprene standard. He also indicated that Denka was being directed to cut chloroprene emission by 85% by January 2017 by installing the best available control technology. Dr. Brown stated that the La. Tumor Registry results show no increase in cancer. LDH’s presence and participation was acknowledged. Dr. Brown also addressed community concerns about the use of incineration at the facility, the length of time over which chloroprene has been released, transparency about agency activities regarding the facility, air monitors, and community health issues.
- December 13, 2016 – St. John Parish Council Meeting/Denka Chloroprene Discussion Attendees: Parish Council, Parish President Robottom, DEQ, LDH (Dr. Jimmy Guidry, Dr. Raoult Ratard, Dr. Parham Jaber, Dr. LuAnn White [Tulane School of Public Health], Dianne Dugas, Shannon Soileau, Rosalind Green)

² Listing prepared by Shannon Soileau, Section Chief of LDH’s Section of Environmental Epidemiology and Toxicology (SEET), who routinely tracks these matters, with light edits or additions by the undersigned.

- Dr. Chuck Carr Brown (LDEQ) gave the St John Parish Council and attending community members an overview of activities to address chloroprene releases at the Denka facility.
- Dr. Jimmy Guidry provided assurance that cancer health effects in the community had not been identified by the Louisiana Tumor Registry (LTR). He recommended that residents with concerns about non-cancer health effects consult with their personal physician.
- Questions from the Parish Council included the following:
 - Request for clarification about the emission reduction process and timeline and the status of the guideline value (EPA) of 0.2 ug/m3.
 - Several council members urged DENKA to cut production.
 - The issue of medical monitoring
 - Dr. Guidry pointed out that medical monitoring is very complicated.
 - Dr. White explained that risk assessment is a model in which we input the best science we have at the current time and is not predictive of what will happen.
- July 12, 2017 – LDEQ/DENKA/LDH MEETING @DEQ Dr. Chuck Carr Brown (LDEQ) began and ended the meeting with discussions about expectations for the Thursday (7/13/2017) meeting with St. John's Parish President. He asked that Denka attend even if not speaking. When Dr. Brown spoke about LDH's role, Dianne Dugas (LDH) added that LDH has a cooperative agreement with CDC/ATSDR and would work through them to address the air sampling data. Denka representatives were interested in how cancer rates will be calculated. Denka representatives offered a PowerPoint presentation to bring everyone up to speed on the Request for Correction submitted by Denka to EPA in June 2017, requesting that EPA's risk calculations based on the facility's emissions should be consistent with those for similar compounds.
- July 13, 2017 – St. John Parish Council Meeting/Denka Chloroprene Discussion-St. John Parish President Natalie Robottom, LDEQ Secretary Dr. Chuck Carr Brown, St. John Parish administrators, LDEQ, EPA, LDH, Denka. The meeting began with background about the Denka facility/chloroprene issue and an update on the status of mitigation projects. EPA outlined data collection and the next steps for Denka and EPA to continue air monitoring. Dr. Guidry (LDH) spoke about the roles of LDH and the LTR and reaching out to CDC/ATSDR for guidance. No sign of imminent risk. Conclusions might change with later information. A schoolboard official reported that at public meetings, the community has requested masks, medical monitoring, and moving children out of the parish. Further discussion took place about 0.2 ug/m3 being a guide to be used throughout the process of lowering chloroprene levels rather than an official standard. LDH suggested the provision of education to local physicians so they can answer patient

questions about chloroprene. The meeting ended with the agencies, Denka, and St. John Parish administrators agreeing to have their communications officers work together to effectively address community concerns and misunderstandings and get information about Denka and chloroprene out to the public.

- August 7, 2017 – LDH and OPH had a conference call with ATSDR (Agency for Toxic Substances and Disease Registry within U.S. Department of Health and Human Services). The State Health Officer (SHO) requested assistance from ATSDR for subject matter expertise in data review of risk calculations and health exposure analysis; to assist the state in determining whether additional urine testing – or other medical monitoring testing – will verify exposure levels.
- September 6, 2017 – Chloroprene Expert Panel Convened LuAnn White (LDH/Tulane SPHTM), Rosalind Green (LDH), Dr. Doug Swift (Tulane Occupational Health), Obaid Faroon (ATSDR), Jim Diaz (LSUHSC), Kathleen Aubin (LDH), Suzanne Straif-Bourgeois (LTR), Beth Scalco (LDH), Parham Jaber (LDH), James Guidry (LDH), Dianne Dugas (LDH). The purpose of this call was to answer the public's questions about chloroprene exposure using field experts, who discussed the issue at hand, notably what actions should be taken in response to the chloroprene releases; what messages should the public receive; and whether medical monitoring of nearby residents is feasible or recommended (using ATSDR criteria for medical monitoring as a framework).
- September 11, 2017 – Chloroprene Call led by EPA's Air Enforcement Division (AED)-EPA AED team members; LDH staff, including Jimmy Guidry and Dianne Dugas; EPA AED wanted to clarify the difference between a study and a Health Consultation. They asked whether LDH's current document regarding Denka data is a Health Consultation. Dianne Dugas (LDH): LDH is not doing a study, and the draft report is not a Health Consultation. LDH has convened an expert panel from different agencies to provide Dr. Guidry with the most knowledge possible. The formalized Health Consultation process has not yet been started as LDH continues to review data and is waiting for EPA's decision regarding Denka's petition for a review of the Inhalation Unit Risk for chloroprene. The Health Consultation will eventually be written (though not certified by ATSDR) as part of SEET's workplan for its Cooperative Agreement with ATSDR. Dr. Guidry (LDH): LDH is trying to explain to the community what EPA's NATA data means in terms of their health and safety. EPA AED's clarified summary of the call: LDH is moving forward in reviewing available data. ATSDR is providing technical assistance but is not going to certify the health consultation. The Louisiana Tumor Registry is also following up with the National Cancer Institute to provide census level data.

- November 14, 2017 – St. John Parish Council Meeting/Denka Chloroprene Discussion
Attendees: Parish Council, DEQ (Dr. Chuck Carr Brown), LDH (Dr. Jimmy Guidry, Dr. LuAnn White [Tulane School of Public Health], Rosalind Green)
Community members given time to express concerns about chloroprene releases. There were approximately 30 attendees from the community in attendance. Seven (7) individuals provided testimony/ comments. The general nature of the community comments were: 1) concern of exposure and uncertainty of the (continued) chloroprene exposure levels even after the Regenerative Thermal Oxidizer (RTO) equipment had been installed at the Denka Plant; 2) long-term health effects of those already living in the area and the future health impacts of children; and 3) timeline of the RTO installment. Dr. Brown provided update about installation of control equipment at the facility as well as continuation of air sampling. Dr. Brown explained that 0.2 ug/m³ was not an established number. Dr. Guidry explained that there hasn't been a whole lot of science available about chloroprene until it was recently announced that it could be a carcinogen. He also summarized SEET's evaluation of LTR's data. Dr. White was identified as convening an Expert Panel on chloroprene, which concluded that the situation was not a public health emergency but chloroprene levels should not be as high as they were.
- December 5, 2017 – A formal letter to US EPA Region 6 requesting clarification and data support related to US EPA's Action Plan for Denka was sent to Administrator Sam Coleman. The LDH letter requested an explanation from EPA regarding their health conclusions referenced in the EPA Action Plan.
- January 2018 – In early January, the expert advisory panel composed of subject matter experts developed a report on chloroprene which has been finalized, shared with LDH Leadership, and placed on LDH website.
- February 14, 2018 – The State Health Officer was provided EPA's formal response to the letter send on December 5. The response fell short of answering specific requests for statements made in the EPA Action Plan. In brief, the EPA Regional Administrator Anne L. Idsal indicated that EPA's Action Plan was "written to provide a point-in-time communication strategy for presenting information to the community...it does not identify actual exposure and associated risks to specific individuals."
- February 28th, 2018 – In February, a local community member/ lawyer (John Cummings) reported to LDH that 11 community members had their urine sampled which showed by-products of chloroprene. Mr. Cummings is requesting a declaration of a public health emergency. Mr. Cummings is requesting that LDH conduct urine samples and medical monitoring on additional members of the community. On February 28, 2018 LDH met

with the Denka Plaintiff lawyers who provided their findings. The information provided was reviewed by toxicologists and determined that there was no new information to add to what was already reviewed by the scientific panel.

- March 13, 2018 – The Secretary, Deputy Secretary and Chief of Staff requested a conference call with State Health Officer, OPH/ Section of Environmental Epidemiology and Toxicology (SEET) and OPH/Epidemiology (Epi) for a recap on Denka – i.e. the requests of the community, recap of the meeting with the plaintiff lawyers, and a review and explanation of findings identified in the Epi Report on Cancer Incidence Data. LDH Secretary requested a letter to ATSDR be developed requesting technical assistance and secondary review of the data collected.
- March 15, 2018 – LDH Secretary sent the formal letter to ATSDR with a request for response by or before the March 28th pre-planned meeting with DEQ on the Denka topic.
- March 27, 2018 – ATSDR was contacted for a response in preparation for the meeting with LDEQ.
- April 19, 2018 – LDH and LDEQ information sharing meeting and prep for St. John Parish community meeting
- April 24, 2018 – LDEQ and LDH attended a Community Meeting at St. John Parish to answer questions regarding Denka. SEET attended.
- April 26, 2018 – LDH and ATSDR conference call was held to discuss State's request for technical assistance from ATSDR. ATSDR Director Dr. Breyse committed to providing LA assistance. ATSDR will respond with a formal response letter. ATSDR will engage with the state SEET Program to develop an action plan. The community's concern that required urgent attention was the risk to children at the nearby schools.
- May 1, 2018 – A Working Level Conference call was held with ATSDR, LDH, LDEQ to advance an action plan incorporating identified community concerns and technical assistance requested of ATSDR.
- May 2, 2018 – Dr. Patrick Breyse, Director of ATSDR sent a formal response letter to Dr. Gee..."recognize the significance of this issue and ..want to...support efforts to reduce chloroprene exposures to individuals living near this facility." ATSDR will assist LDH in developing an Action Plan which will outline where ATSDR technical assistance will be provided.

- May 18, 2018 – A Working Level conference call with OPH/SEET and ATSDR Air Subject Matter Experts. SEET is drafting a preliminary risk assessment product based on available data to summarize the air emissions data with the intended outcome of providing a risk statement(s) related to the impact of schools in the vicinity. Multiple, intermittent and fluctuating variables – i.e. wind direction, seasonality, intermittent (yet declining) air emissions – create a challenging model upon which to calculate current and future impact of chloroprene exposure on children. SME's discussed using ROS method and log models, PROUCL statistical analysis, data autocorrelation and examination of mean plus two-sided confidence intervals as mathematical means of quantifying uncertainty – and indicating risk. The SME's expressed concern is that complex modeling on a limited data-set of air emissions will not provide the scientific basis for a policy-decision related to school closures or even future impact of exposure on children. SEET staff does not have knowledge of some of the advanced methods of statistical data analysis proposed by the SME's. Using complicated and sophisticated modelling would require collecting additional data, training SEET staff and missing the deadline of June 15th. It was decided to use the data already available and create a risk matrix to base the decision by the deadline.
- May 22, 2018 – SEET contacted EPA (Frances Verhalen) to request daily sampling at Fifth Ward Elementary. EPA could not accommodate the request.
- May 23, 2018 – ATSDR reiterated that they would not be reviewing the document that SEET/Dr. Ratard developed.
- June 15, 2018 – A draft report by SEET/Dr. Ratard summarizing the risks to school children posed by chloroprene emissions from the Denka Plant has been completed. The draft report has been circulated to DEQ and LDH leadership for input.
- June 22, 2018 – Internal conference call held with LDH, BMAC, DEQ, Dr. Ratard and SEET. The intent was twofold – 1) to discuss highlights of the report as well as talking points for a press release; and 2) to determine strategy of notifications. School Superintendent and Parish leadership were notified and a drafted press release was circulated to parish and agency leads.
- June 29, 2018 – Press Release Health department provides health risk data to St. John officials based on report *A Reference Document for the Preliminary Assessment of Chloroprene Levels in St. John the Baptist Parish*. SHO and BMAC conducted interview with Fox 8. The story was shared with affiliate stations. Articles posted here:

[http://www.wafb.com/story/38542642/ldh-cancer-risk-wont-greatlydecrease-by-moving-students-farther-from-denka-plant;](http://www.wafb.com/story/38542642/ldh-cancer-risk-wont-greatlydecrease-by-moving-students-farther-from-denka-plant)
https://www.nola.com/environment/index.ssf/2018/06/moving_st_john_kids_to_school.htm

- July 24, 2019 – The University Network for Human Rights (UNHR) released via its website a document entitled “Waiting to Die: Toxic Emissions and Disease Near the Louisiana Denka/DuPont Plant.”
- August 9, 2019 – Dr. Gee (LDH Secretary) asks Dr. Donna Williams to put together a study proposal. LDH applies for the EPA Multipurpose Grant (MPG) to fund the study.
- March 1, 2021– release of *Cancer Reporting In St. John Parish [CRISP], Cancer Surveillance Project, Final Report 2021* study (Exhibit LDH-A to this letter) conducted by LSU HSC School of Public Health. The study was funded, at least in part, with grant monies from an October 8, 2020 EPA Multipurpose Grant.
- April 11, 2022 – release of *St. John the Baptist Parish Chloroprene Monitoring Demonstration, Subproject of “Cancer Reporting In St. John Parish (CRISP)” Project* (Exhibit LDH-B to this letter).
- April 11, 2022 – LDH sends letter to ATSDR (Exhibit LDH-C to this letter) requesting:
 - Technical analysis of LSUHSC’s newly reported data and findings,
 - Assessment of the *need* for additional monitoring, data collection, or other measures, and
 - Recommendations regarding *implementation* of any recommended additional monitoring or data collection efforts, including additional public health measures and public advisories.
- April 11, 2022 – LDH sends letter to EPA (Exhibit LDH-D to this letter) requesting:
 - Technical analysis of LSUHSC’s newly reported data and findings,
 - Assessment of the *need* for additional monitoring, data collection, or other measures, and
 - Recommendations regarding *implementation* of any recommended additional monitoring or data collection efforts, including additional public health measures and public advisories.

The matters listed above clearly demonstrate that LDH has not shirked in any way its responsibilities and proper role with respect to the situation in St. John the Baptist Parish. On the contrary, the listed matters demonstrate that LDH, much like EPA and LDEQ, is simply trying to

diligently navigate the best approach to take regarding the subject airborne chloroprene, a substance for which the EPA has not set a regulatory or enforcement value regarding emissions from industrial facilities.³ With many unknowns and a present lack (on the part of all concerned agencies) of fully conceived consensus recommendations regarding how best to address issues related to exposure of “nearby” residents to chloroprene emissions from industrial facilities, LDH has declined to take some of the drastic steps/recommendations advocated by Sierra Club and Concerned Citizens of St. John.⁴ Rather than recognizing LDH’s hesitance as prudent or a mere difference of opinion concerning a situation for which a consensus approach is not currently available, the Sierra Club has attempted to characterize LDH’s alleged lack of additional “warranted” action as somehow being animated by racial bias, with the implication that different or additional actions or recommendations would have been taken or given by LDH if the racial makeup of St. John the Baptist Parish were different. Such characterization is, borrowing language from the Complaint, nonsensical. There is simply no reason to believe, or even suspect, that anything LDH has done or not done with respect to Denka and the situation in St. John the Baptist Parish was in any way racially motivated. Nor has anything LDH has done or not done created a disparate impact concerning similarly situated persons or groups.

The Complaint’s examples of alleged disparate treatment are inapposite and simply incorrect. With regard to the discussed recommendation by LDH that East St. John Elementary

³ A good summary of the meaning of NATA values can be found in pertinent language in the *Order and Reasons* issued by Judge Martin L.C. Feldman in *Juanea L. Butler v. Denka Performance Elastomer LLC, Et al.*, (U.S. Eastern District of Louisiana; 2:18-cv-06685-MLCF-KWR, Document 118, Filed 03/13/19), footnotes omitted:

Even the federal agency that announced this suggested 0.2 µg/m³ threshold disclaims its regulatory or enforcement value. In fact, the Court takes notice that the EPA warns against using NATA results as an absolute risk measure, cautioning that “NATA is a screening tool, not a refined assessment. It shouldn’t be used as the sole source of information to regulate sources or enforce existing air quality rules,” and it “wasn’t designed as a final means to pinpoint specific risk values at local levels. The results are best used as a tool to help learn which pollutants, types of emissions sources and places should be studied further.” NATA results are not appropriate “to determine exactly how many people are exposed to precise levels of risk or if a certain area is ‘safe’ or not.” “[Y]ou should avoid using NATA results as an absolute measure of your risk from air toxics.”

⁴ LDH\SEET’s June 14, 2018 [A] *Reference Document for the Preliminary Assessment of Chloroprene Levels in St. John the Baptist Parish* explicitly notes (at page 15) that (emphasis added):

Based on data limited to the March-May 2018 sampling results, **transferring children from the current Fifth Ward Elementary School location to another location within the community would not greatly decrease their theoretical risks of developing excess cancers from exposure to chloroprene.** The risks calculated for this assessment are conservative theoretical estimates and are not meant to predict actual health effects. These risk estimates may change as additional data become available.

Moreover, when asked to opine about additional data compiled through March, 2019, Dr. Raoult Ratard, MD, then LDH State Epidemiologist, in an internal document drafted to assist Dr. Jimmy Guidry, then State Health Officer, respond to a March 12, 2019 letter from the St. John the Baptist Parish School Board, stated that “None of the schools in the area meet the 0.2µ/m3. If the 5th ward elementary should be closed ALL schools in the area should be closed.” (see Exhibit LDH-E to this letter)

School be moved back to its original location, versus LDH's declining to recommend that Fifth Ward Elementary School be moved, it is readily apparent that the situations are clearly different and distinguishable.⁵ The East St. John Elementary School situation did not involve chloroprene emissions.⁶ Rather, the December 3, 2015 *Preliminary Health Consultation, East St. John Elementary School* procured by LDH and prepared by LuAnn E. White, PHD, DABT, a toxicologist at Tulane University, while noting that "There is no obvious indoor air issue or outdoor air quality event that occurred around the time of the reported respiratory symptoms", focused on airborne particulates as a possible cause. Given that the temporary school location, as noted in the *Consultation*, was very close to a grain elevator and concrete plant, both known emitters of airborne particulate matters, and given that LDH apparently had no similar reports of respiratory problems at the school's original location, a recommendation to move back to the original location at the earliest possible time was seemingly an easy call. Concerning the mitigating recommendations that LDH made with respect to the East St. John Elementary temporary location (outlined on Page 18 of the Complaint), it is clear that they related to particulate matters, a factor different from and not at issue concerning the Fifth Ward Elementary site. The Complaint cites no evidence to indicate that any sort of comparable measures would be effective with regard to the Chloroprene issues relevant to the Fifth Ward Elementary site.

The Complaint's attempt to contrast LDH's COVID-related actions concerning school students with LDH's approach towards students' chloroprene exposure in St. John the Baptist Parish, and thereby implicitly suggest that racial bias accounts for the differing approaches, is frankly absurd. Comparing the Fifth Ward Elementary and East St. John Elementary situations is, for the reasons noted above, a comparison of apples to oranges. Comparing LDH's approach to protecting school students (and thereby their parents and grandparents) from a worldwide Pandemic involving a highly transmittable and often acutely deadly disease with LDH's approach concerning a non-acute cancer risk from chloroprene, a chemical for which no regulatory or enforcement value has been set by EPA, is comparing apples to watermelons.

In summary, all of LDH's actions/non-actions concerning the subject situation in St. John the Baptist Parish have been motivated by a desire to take only properly supportable and duly warranted steps, based upon the evidence and data available.⁷ Any extent to which LDH has not

⁵ Quite curiously, the Complaint does not allege that the student population at East St. John Elementary School has a different or less minority racial makeup than Fifth Ward Elementary.

⁶ Chloroprene was not on LDH's "radar" until the issuance of the above-discussed EPA release of its 2011 National Air Toxics Assessment (NATA) on December 17, 2015. In fact, the original location of the East St. John Elementary School is actually closer to the Denka facility (approximately 1.52 versus approximately 2.84 miles) than the temporary location was.

⁷ Note that new potentially relevant data or findings have recently been obtained. As noted hereinabove, on April 11, 2022, the *St. John the Baptist Parish Chloroprene Monitoring Demonstration, Subproject of "Cancer Reporting In St. John Parish (CRISP)" Project* (Exhibit LDH-B to this letter) was released, and LDH immediately thereafter

taken the steps advocated by the Complainants represents LDH's discretionary determinations that such actions are insufficiently warranted, based upon said best evidence.⁸ The Complainants' attempt to morph such determinations into evidence of racial bias is simply unsupported.

Concerning the Complaint's allegation that LDH (and LDEQ) have failed to fulfill the terms of the October 8, 2020, EPA grant "in a timely and transparent fashion", LDH denies that, and avers that there is no evidence thereof. In a letter from EPA to Concerned Citizens of St. John dated April 5, 2021 (Exhibit LDH-G to this letter) concerning a similar allegation, the EPA stated, in pertinent part, that:

The EPA has completed its review of this matter. The EPA found that the work done is within the scope of work provided by the state and the activities align with the requirements of the CAA §105 criteria. While considerable work was done by Louisiana State University (LSU) New Orleans School of Public Health for the LDH to collect information for the Tumor Registry study, the overall project is not complete and additional work is underway by the LDH in cooperation with the LDEQ.

requested the technical assistance of both EPA and ATSDR concerning its findings. Such assistance *might* result in changes in recommendations or approaches concerning this situation by LDH.

⁸ Note that interested persons have similarly accused EPA of allegedly failing to take warranted action concerning the chloroprene situation in St. John the Baptist Parish. See, for example, the *Emergency Request For Precautionary Measures Pursuant to Article 25 of the Rules of Procedure of the Inter-American Commission on Human Rights on Behalf of Residents of St. John the Baptist Parish, Louisiana* filed with the Inter-American Commission on Human Rights, Organization of American States by the Tulane Environmental Law Clinic on or about June, 2021 (Exhibit LDH-F to this letter), wherein it was alleged, *inter alia*, that (footnotes omitted):

The U.S. government jeopardizes the life and health of people living near the Denka/Dupont facility by failing to establish an enforceable national standard for chloroprene consistent with EPA's health protective value of 0.002 [*sic*] $\mu\text{g}/\text{m}^3$, allowing the Denka/DuPont facility to emit chloroprene such that ambient concentration levels far exceed EPA's 0.2 $\mu\text{g}/\text{m}^3$ limit of acceptability, and inadequately monitoring the local air quality.

...
EPA has failed to perform its nondiscretionary duty under the Clean Air Act and neglected to exercise the full extent of its statutory authority to protect the lives and health of the beneficiaries.

...
Furthermore, despite acknowledging the severity of the risk posed by the Denka/DuPont facility's chloroprene emissions, EPA has neglected to exercise the full extent of its statutory authority to protect the beneficiaries. Where air pollution is causing imminent and substantial danger, EPA may exercise emergency powers to protect the public health, welfare, or the environment. EPA could use this authority to set enforceable national standards and compel Denka to cease operations or reduce its emissions to levels that protect the lives and health the beneficiaries. EPA's failure to exercise the full extent of its authority under the Clean Air Act, including its emergency powers, is harmful inaction that violates beneficiary residents' rights to health, life, and personal integrity.

The referenced “additional work” has now been completed, in the form of the aforementioned April 11, 2022 *St. John the Baptist Parish Chloroprene Monitoring Demonstration, Subproject of “Cancer Reporting in St. John Parish (CRISP)” Project* (Exhibit LDH-B to this letter).⁹ LDH avers that this Subproject study fulfills the first enumerated requirement of the EPA grant at issue: “(1) determine if there are higher instances of cancer in the community due to toxic chemical emissions by the Denka Plant”. With respect to timeliness, LDH avers that any deviance from the anticipated timelines listed in the grant results from expected and reasonable delays caused by the COVID-19 pandemic.

2. Whether LDH has and is implementing the procedural safeguards required under 40 C.F.R. Parts 5 and 7 that all recipients of federal assistance must have in place to comply with their general nondiscrimination obligations, including specific policies and procedures to ensure meaningful access to LDH services, programs, and activities, for individuals with limited English proficiency (LEP) and individuals with disabilities, and whether the LDH has a public participation policy and process that is consistent with Title VI and the other federal civil rights laws, and EPA’s implementing regulation at 40 C.F.R. Parts 5 and 7.

As a state agency that annually receives large amounts of money from several federal agencies, including the United States Department of Health and Human Services’ (HHS) Centers for Medicare & Medicaid Services (CMS), LDH is bound by and diligently seeks to comply with all applicable non-discrimination and meaningful access requirements thereof. Such compliance includes, but is not necessarily limited to, the following¹⁰:

- LDH has adopted and follows a written general (non) *Discrimination in Services Provision* policy, which is available on its website (see Exhibit LDH-H to this letter).
- The LDH website also hosts other applicable non-discrimination policy statements— see, for example, the *USDA Nondiscrimination Statement* attached as Exhibit LDH-I to this letter.
- The LDH website has a built-in Google translate feature that allows the website contents to be easily translated into twelve different non-English languages. See the screenshots attached to this letter as Exhibit LDH-J, Exhibit LDH-K, and Exhibit LDH-L.
- LDH has a staffed Office of Community Partnerships and Health Equity (OCPHE) that includes a Bureau of Minority Health, which seeks to ensure that LDH “minimize[s]

⁹ Note that even this newest study does not recommend that Fifth Ward Elementary School be relocated.

¹⁰ Note that all of the below-listed Exhibits that depict LDH website screenshots, or documents retrieved from the LDH website, were accessed on or about 5/24/2022.

health disparities among underserved racial and ethnic populations in the Louisiana through collaboration, partnerships, and education.” See the screenshots attached to this letter as Exhibit LDH-M, Exhibit LDH-N, and Exhibit LDH-O.

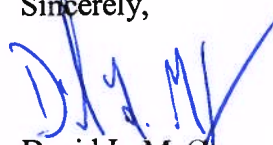
- LDH posts appropriate non-discrimination notices in its offices and facilities. See, for example, the photos taken on or about May 24, 2022, of a bulletin board located on the first floor of LDH’s headquarters, attached to this letter as Exhibit LDH-P.

In short, LDH is fully committed to ensuring that all residents of the state are equally served thereby, including ethnic minorities, individuals with disabilities, and individuals with limited English proficiency. To the extent, if any, that EPA finds technical deficiencies with LDH’s policies and procedures in this regard, LDH will be happy to work with EPA in implementing necessary changes.

For the reasons noted above, LDH avers that the claims contained in the January 20, 2022 Complaint to EPA from CCSJ and Sierra Club are unfounded and should be dismissed or closed. In addition to the documents provided herewith, LDH will be happy to provide additional documentation or information upon request.

Please do not hesitate to contact me if you have any questions or need any additional information.

Sincerely,



David L. McCay
Staff Attorney
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Attachments (Exhibits LDH-A – LDH-P)